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DEPARTMENT OF COMMERCE

International Trade Administration

[C-602-811]

Silicon Metal from Australia: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to Simcoa Operations Pty. Ltd. (Simcoa), a producer/exporter of silicon metal from Australia. The period of investigation is January 1, 2016, through December 31, 2016.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Kate Johnson or John Anwesen, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4929 or (202) 482-0131, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Determination* on August 14, 2017.¹ Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The

¹ See *Silicon Metal from Australia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 37843 (August 14, 2017) (*Preliminary Determination*).

revised deadline for the final determination of this investigation is now February 27, 2018.² A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum issued concurrently with this notice.³ The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is silicon metal from Australia. For a full description of the scope of this investigation, see the "Scope of the Investigation" in Appendix I of this notice.

Scope Comments

² See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

³ See Memorandum, "Silicon Metal from Australia: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation," dated concurrently with this determination (Issues and Decision Memorandum) and hereby adopted by this notice.

During the course of this investigation, Commerce received numerous scope comments from interested parties. Prior to the *Preliminary Determination*, Commerce issued a Preliminary Scope Decision Memorandum⁴ to address these comments. Since the *Preliminary Determination*, Globe Specialty Metals, Inc., (the petitioner) submitted a case brief and interested parties submitted rebuttal briefs concerning the limits to silicon content as specified in the scope.

Commerce reviewed these briefs, considered the arguments therein, and is not making any additional changes to the scope of the investigation. For further discussion, see Commerce's Final Scope Decision Memorandum.⁵ The scope in Appendix I reflects the final scope language.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that

⁴ See Memorandum, "Silicon Metal from Australia, Brazil, Kazakhstan, and Norway: Scope Comments Decision Memorandum for the Preliminary Determinations," dated June 29, 2017 (Preliminary Scope Decision Memorandum).

⁵ See Memorandum, "Silicon Metal from Australia, Brazil, Kazakhstan, and Norway: Final Scope Comments Decision Memorandum," dated February 27, 2018 (Final Scope Decision Memorandum).

gives rise to a benefit to the recipient, and that the subsidy is specific.⁶ For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum. Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and the minor corrections presented at verification, we made certain changes to the respondent's subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for Simcoa, the producer/exporter of subject merchandise selected for individual examination in this investigation.

Section 705(c)(5)(A) of the Act provides that in the final determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated an individual estimated countervailable subsidy rate for Simcoa, the only individually examined producer/exporter in this investigation. Because the only individually calculated rate is not zero, *de minimis*, or based entirely on facts otherwise available, the estimated weighted-average rate calculated for Simcoa is the rate assigned to all-other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Commerce determines that the following estimated countervailable subsidy rate exists:

⁶ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Company	Subsidy Rate
Simcoa Operations Pty. Ltd. ⁷	14.78 percent
All-Others	14.78 percent

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of publication of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* in the *Federal Register*. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after December 12, 2017, but to continue the suspension of liquidation of all entries from August 14, 2017, through December 11, 2017.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, will reinstate the suspension of liquidation under section 706(a) of the Act, and will require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and

⁷ As discussed in the *Preliminary Determination*, Commerce has found the following companies to be cross-owned with Simcoa: Silicon Metal Company of Australia Pty Ltd.; Microsilica Pty Ltd.; and Simcoa International Pty Ltd.

all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: February 27, 2008.

Christian Marsh,
Deputy Assistant Secretary
for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of these investigations.

Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS. While HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Subsidies Valuation
- IV. Analysis of Programs
- V. Analysis of Comments
 - Comment 1: Provision of Electricity for Less Than Adequate Remuneration (LTAR)
 - Comment 2: Payments under the Demand Side Management (DSM) Scheme and Ancillary Service (Spinning Reserve) Scheme
 - Comment 3: Renewable Energy Target (RET) Program
 - Comment 4: Research and Development (R&D) Tax Incentive
 - Comment 5: Provision of Quartz for LTAR
 - Comment 6: State Agreement Loan and Grant
 - Comment 7: Calculation Errors in the Preliminary Determination
- VI. Recommendation

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